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516398—59

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 195

UNITED STATES EX REL. TIE SING ENG, PETITIONER

v.

P. A. ESPERDY, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE IN THE NEW YORK DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals for the Second Circuit (R. 22a–23a) is reported at 266 F. 2d 957. The opinion of the District Court for the Southern District of New York (R. 4a–7a) is reported at 165 F. Supp. 633.

JURISDICTION

The judgment of the Court of Appeals was entered on June 1, 1959 (R. 22a). The petition for a writ of certiorari was filed on July 8, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Petitioner, a Chinese national, signed on a Dutch ship in Rotterdam. He was admitted to the United States for twenty-nine days as an alien seaman but remained in this country beyond that time. The question is whether, in effecting petitioner's deportation to the Netherlands which had agreed to accept him, the United States was required to obtain assurances that petitioner would be granted permanent residence in that country.

STATUTE INVOLVED

Section 243(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1253(a), provides:

> The deportation of an alien in the United States provided for in this Act, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. No alien shall be permitted to make more than one such designation, nor shall any alien designate, as the place to which he wishes to be deported, any foreign territory contiguous to the United States or any island adjacent thereto or adjacent to the United States unless such alien is a native, citizen, subject, or national of, or had a residence in such designated foreign contiguous territory or adjacent island. If the government of the country designated by the alien fails finally to advise the Attorney General within three months following original in-

quiry whether that government will or will not accept such alien into its territory, such designation may thereafter be disregarded. Thereupon deportation of such alien shall be directed to any country of which such alien is a subject national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particular case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either—

(1) to the country from which such alien last entered the United States;

(2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;

(3) to the country in which he was born;

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided prior to entering the country from which he entered the United States;

(6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or